

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MARIBEL COLON and U.S. POSTAL SERVICE,  
POST OFFICE, Philadelphia, PA

*Docket No. 02-373; Submitted on the Record;  
Issued July 11, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issues are: (1) whether appellant met her burden of proof to establish that she sustained an occupational disease in the performance of her federal employment; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a merit review.

On February 1, 2000 appellant, then a 31-year-old casual mail processor, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that she had lower back pain resulting from her federal duties that included lifting boxes and sacks weighing as much as 70 pounds. She alleged that the pain began approximately two months earlier. Appellant had a history of back pain from at least 1993, with recent medical attention on November 11, 1999. She was placed on light duty with the restriction of not lifting over 20 pounds.

On February 3, 2000 a magnetic resonance imaging (MRI) scan revealed mild degenerative disc disease at the L5-S1 level with small left posterolateral disc protrusion at the L5-S1 level.

In a February 22, 2000 report, Dr. Melissa Nieves wrote:

"[Appellant] is under my care for back pain, resulting from degenerative disc disease [as confirmed by an MRI scan]. I prescribed a back brace (for use at work) on November 16, 1999. [She] reports that she has not yet received a back brace from her employer. [Appellant] is currently working light duty (sorting mail) and is still having significant back pain. Her work restrictions are as follows: no lifting greater than 20 pounds. (indefinitely) no bending at the waist and no prolonged standing."

In a May 4, 2000 letter, the Office requested more information from both appellant and the employing establishment.

In a June 15, 2000 decision, the Office denied appellant's claim finding the medical evidence insufficient on the issue of causal relationship between appellant's medical condition and her employment factors.

In a July 6, 2000 letter, appellant requested a hearing before the Office's Branch of Hearings and Review.

In a May 31, 2000 letter, Dr. Nieves wrote:

"[Appellant] has been a patient in our office since 1993. Most recently I have been treating her for severe lower back pain with radicular symptoms, which began November 10, 1999 while employed as a mail handler with the [employing establishment].

"[Appellant's] symptoms include severe lower back pain radiating to her lower extremities and bilateral leg numbness. The pain is severe enough to limit her from prolonged standing or sitting, from flexing at the waist and from lifting greater than five pounds. After initial examination by me on November 16, 1999 I recommended back brace use while at work and she was given an order for this which the employer did not comply with. [Appellant] was later put on light duty by [the employing establishment] which she was still unable to tolerate due to prolonged sitting and repetitive movements of upper extremities causing back pain.

"[Appellant] has been prescribed anti-inflammatory medications and muscle relaxants which have not relieved her pain adequately therefore[,] sedative narcotic pain medication have been prescribed. She has had minimal relief with these medications and has been referred to a pain specialist for epidural steroid injections. [Appellant] has shown mild improvement of pain with injections thus far but still remains incapacitated due to pain. Studies performed to evaluate [her] condition include x-rays of [the] lumbar spine on February 3, 200 (which were normal) and [an] MRI [scan] of lumbar spine on February 3, 2000 which showed mild degenerative disc disease at the L5-S1 level with mild left posterolateral disc protrusion at L5-S1 level.

"In my opinion [appellant's] work activities while employed by the [employing establishment] were directly related to her current condition. I believe that the heavy lifting, pushing and pulling of heavy boxes and sacks contributed significantly to the development of [appellant's] degenerative disc disease and lack of provision of a back brace by the employer may have resulted in further injury ... at this point she is completely incapacitated from work as she is unable to even sit for prolonged periods of time."

In an April 10, 2001 decision, the hearing representative denied appellant's claim finding that Dr. Nieves' report lacks sufficient rationale on the issue of causal relationship between appellant's history of back pain and degenerative disc disease and her employment factors.

Appellant, by letter dated April 23, 2001, requested reconsideration. By decision dated September 20, 2001, the Office denied this request without granting a merit review.

The Board finds that this case must be remanded for further medical development.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>2</sup> These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>3</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>4</sup>

However, it is well established that proceedings under the Act are not adversarial in nature and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.<sup>5</sup>

The Board notes that Dr. Nieves' May 31, 2000 report is not completely rationalized on the issue of appellant's history of back pain. He describes a significant contribution toward her

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>3</sup> *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

<sup>5</sup> *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1983).

condition from her employment factors. Her reports, based on a long history with appellant, are unequivocal and clear that appellant's employment has contributed to her medical condition.

Dr. Nieves' reports are not contradicted by any substantial medical or factual evidence of record. Therefore, while the reports are not sufficient to meet appellant's burden of proof to establish her claim, they raise an uncontroverted inference between appellant's claimed condition and the employment factors and are sufficient to require the Office to further develop the medical evidence and the case record.

Accordingly, the case will be remanded to the Office for further evidentiary development regarding the issue of whether appellant's employment factors contributed to her back condition. The Office should prepare a statement of accepted facts and obtain a medical opinion on this matter. After such development of the case record as the Office deems necessary, an appropriate decision shall be issued.<sup>6</sup>

The decision of the Office of Workers' Compensation Programs dated April 10, 2001 is hereby set aside and the case is remanded for further proceedings consistent with the above decision.

Dated, Washington, DC  
July 11, 2002

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>6</sup> In view of the Board's disposition of the first issue, the question of whether the Office erred in denying a merit review of appellant's claim need not be reached.